



Atty. Dkt. No. 023533-0144

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Thomas D. HORN

Title: IMMUNOTHERAPY OF
EPITHELIAL TUMORS USING
INTRALESIONAL INJECTION
OF ANTIGENS THAT INDUCE A
DELAYED TYPE
HYPERSENSITIVITY
REACTION

Appl. No.: 10/081,185

Filing Date: 2/25/2002

Examiner: Examiner Gary B. Nickol

Art Unit: 1642

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop NON-FEE AMENDMENT
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the restriction requirement set forth in the Office Action mailed dated April 9, 2004, Applicant hereby provisionally elects Group II, Claims 1-9, 13-15, 33-39 and 42-45, and further elects group (d), bacterial and candida antigens, with traverse. This response filed today, May 10, 2004 is a timely response as May 9, 2004 was a Sunday.

The Examiner has required restriction further restriction of the claims of Group II, among groups a) – f) directed to a pharmaceutical composition comprising at least 2 antigens. However Applicants respectfully request that the Examiner reconsider his position for further restriction and examine groups d) and f) together with the claims of Group II. Applicants submit that both of candida and trichophyton are fungal antigens and as the Examiner is aware, claim 8 is directed to broader groups of antigens, i.e., "...viral, fungal, bacterial and a combination thereof." MPEP 803 recites that if "the search and examination of an entire

application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." Applicants submit that this is the situation in the present application because although the Examiner considers "candida" and "trichophyton" to be independent inventions both of these antigens are specific fungal antigens.

Applicants respectfully request that the Examiner reconsider his position regarding this restriction requirement and examine the claims of Groups II and groups d) and f), as one invention for the reasons set forth above. It is believed that the alleged separate inventions are related and should be examined as one invention.

Applicants, of course, reserve the right to file one or more divisional applications covering the subject matter of the non-elected claims. Receipt of the initial Office Action on the merits is awaited.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date May 10, 2004
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